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In re application of
Takanori Kamoto et al.
Serial No. 10/665,088

Filed: September 22, 2003

For: INK COMPOSITION, RECORDING METHOD AND RECORDED IMAGE UTILIZING
THE SAME, INK SET AND INK HEAD

DECISION ON
PETITION

This is a decision on the PETITION UNDER 37 CFR 1.181 received December 18, 2006.

On March 29, 2005, a restriction requirement was made by the examiner. Applicants responded to the requirement on April 7, 2005 and elected Group I claims with traverse. The examiner noted applicant's election and issued a non-final office action, indicating the claims were now constructively elected by original presentation.

Applicants filed the instant petition on December 18, 2006, along with a reply to the outstanding office action. Applicant argues that the examiner's basis for withdrawing the claims, i.e. non-elected by original presentation is not understood.

DECISION

Section 818.03 of the MPEP states in part:

818.03(c) Must Traverse To Preserve Right of Petition 37 CFR 1.144. Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Director to review the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

As stated by 818.03(c), "After a *final* requirement for restriction", the applicant may petition the Commissioner to review the requirement (emphasis added). In the instant case, the examiner has not yet responded to the request for reconsideration of the restriction requirement and the examiner never made the requirement final. Therefore, any petition for reconsideration of the restriction requirement is premature.

Accordingly, because the instant petition is premature for the reasons given above, the petition for withdrawal of the restriction requirement is **DISMISSED**. The application is being forwarded to the

examiner for consideration of the response filed December 18, 2006. The examiner is directed to clarify the restriction requirement on the record and/or make the restriction requirement final.

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